

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 692 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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KISHOR GINNING FACTORY

Versus

MEHTA DIPCHAND VAKHATCHAND & COMPANY

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Appearance:

MR SURESH M SHAH for Petitioner

MR JR NANAVATI for Respondent No. 1

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 04/11/98

ORAL JUDGEMENT

Being aggrieved by the judgment and decree dated 31st August 1978, passed by the then learned Joint Civil Judge (S.D.), Jamnagar in Special Civil Suit No. 116 of 1973 on his file, dismissing the suit, the original-plaintiff has filed this appeal.

2. It is not necessary to set out the facts in details. However necessary facts in short may be stated. The appellant filed the suit being Special Civil Suit No.122 of 1972 in the Court of the Joint Civil Judge (S.D.) at Jamnagar for the recovery of Rs. 12,000/-.

The respondent was carrying on his business at Dhrangadhra. The appellant had informed the respondent on telephone to sell bales of cotton at a particular rate. Thereafter the market was raising and therefore the respondent demanded Rs. 2,000/- by way of deposit. The said amount was remitted and later on Rs.10,000/- was also paid to the respondent by way of deposit. On demand the amount of deposit, for the reasons stated in the Written Statement by the respondent, when not paid back, the appellant filed the suit which was heavily contested by the respondent. A plea about the jurisdiction along with other pleas was raised, and Issue thereof was also framed. The learned Judge recorded the evidence. He then hearing the parties, on merits, gave findings on all Issues and also held that he had no jurisdiction to hear and decide the suit, because the transaction in question took place outside his local limits. He thereafter dismissed the suit. It is against that order of dismissal, the present appeal is filed.

3. The learned advocate representing the appellant submitted that he would not like to enter into the merits of findings on all other issues because it would be a futile exercise when the lower Court has held that it has no jurisdiction to hear and decide the suit. He then made it clear that he would not assail the finding qua the jurisdiction, and further contends that when the lower Court has held that it has no jurisdiction, the course open to the Court was not to dismiss the suit but return the plaint for presentation before the competent Court. As that is not done by the learned Judge, necessary order in that regard is required to be passed by this Court so that the appellant can take the plaint and present the same before competent Court.

4. In reply to such submission, Mr. Nanavati, the learned advocate representing the respondent submitted that appropriate order may be passed in this case.

5. A short question that requires to be dealt with is what should be done by the Court when it finds that it has no jurisdiction. A similar question was raised before this Court in the case of Soni Vrajilal Jethalal Vs. Soni Jadavi Govindji, Decd. & Ors. - 13 G.L.R. 555, wherein it is made clear keeping Order VII Rule 10 Civil Procedure Code in mind, that if the Court finds that it has no jurisdiction, it cannot dismiss the suit, but the plaint should be returned to the plaintiff for presentation to the appropriate court. Despite such decision, the learned Judge has preferred to dismiss the suit rather than returning the plaint for presentation

before the appropriate court. The order, of the learned Judge, therefore, is erroneous and the same is required to be set aside.

6. In the result, the appeal is partly allowed. The judgment and decree of the learned Judge, dismissing the suit, are hereby set aside. The Plaint is ordered to be returned for presentation before the competent Court.

7. The trial Court shall return the Plaint to the appellant undergoing necessary formalities as per Rule 10 and 10A of Order VII, Civil Procedure Code within a month from the date of the receipt of the record. The appellant shall appear before the lower Court on 23rd November 1998. The Office shall send the Record and Proceedings of the suit back to the lower Court, so as to make the same reach there latest by 16th November, 1998.

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(rmr).